

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)	
)	
AGROMAC - LOCKWOOD SITE)	
Gering, Nebraska,)	
)	
AGROMAC INTERNATIONAL, INC.,)	
)	
)	
Respondent.)	Docket No. CERCLA-07-2003-0302
)	
)	
Proceedings under Sections)	
106(a) and 122 (h) of the)	
Comprehensive Environmental)	ADMINISTRATIVE ORDER
Response, Compensation,)	ON CONSENT
and Liability Act of 1980)	
(CERCLA), as amended by the)	
Superfund Amendments and)	
Reauthorization Act of 1986)	
(SARA), 42 U.S.C. §§ 9606(a))	
and 9622(h).)	
)	

TABLE OF CONTENTS

ARTICLE I. JURISDICTION	4
ARTICLE II. STATEMENT OF PURPOSE.	5
ARTICLE III. PARTIES	6
ARTICLE IV. DEFINITIONS	7
ARTICLE V. FINDING OF FACT	11
ARTICLE VI. CONCLUSIONS OF LAW	18
ARTICLE VII. DETERMINATIONS	21
ARTICLE VIII. WORK TO BE PERFORMED	22
ARTICLE IX. REIMBURSEMENT OF RESPONSE COSTS	25

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ARTICLE X. MONITORING AND QUALITY ASSURANCE	28
ARTICLE XI. DOCUMENT REVIEW AND APPROVAL	29
ARTICLE XII. ADDITIONAL WORK	30
ARTICLE XIII. NOTIFICATION	31
ARTICLE XIV. REPORTING	32
ARTICLE XV. CONFIDENTIAL BUSINESS INFORMATION	33
ARTICLE XVI. ACCESS TO THE SITE	34
ARTICLE XVII. DEED RESTRICTIONS	35
ARTICLE XVIII. EPA OVERSIGHT	36
ARTICLE XIX. INDEMNIFICATION	37
ARTICLE XX. OTHER APPLICABLE LAW	38
ARTICLE XXI. <i>FORCE MAJEURE</i>	38
ARTICLE XXII. RECORD PRESERVATION	39
ARTICLE XXIII. SUBSEQUENT MODIFICATION OR AMENDMENT	40
ARTICLE XXIV. COVENANT NOT TO SUE BY EPA	40
ARTICLE XXV. RESERVATION OF RIGHTS BY EPA	42
ARTICLE XXVI. COVENANT NOT TO SUE BY RESPONDENT	44
ARTICLE XXVII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	46
ARTICLE XXVIII. DISPUTE RESOLUTION	47
ARTICLE XXIX. SATISFACTION AND COMPLETION	50
ARTICLE XXX. FAILURE TO COMPLY AND STIPULATED PENALTIES	50
ARTICLE XXXI. CERTIFICATION	54

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ARTICLE XXXII. SEVERABILITY	55
ARTICLE XXXIII. SIGNATURE BY PARTIES	55
ARTICLE XXXIV. PUBLIC COMMENT	55
ARTICLE XXXV. ATTORNEY GENERAL APPROVAL	56
ARTICLE XXXVI. EFFECTIVE DATE	56

Attachments incorporated into Consent Order:

1. Figure 1: Site Map
2. Statement of Work
3. Declaration of Covenants and Restrictions
4. Legal Description of the Facility

ARTICLE I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued by the Director, Superfund Division of Region VII of the United States Environmental Protection Agency ("EPA" or "Agency") to Respondent Agromac International, Inc. ("Respondent"), pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9606(a) and 9622(h), and delegated to the Administrator of EPA by Executive Order 12580, 52 Fed. Reg. 2923, dated January 23, 1987, and further delegated to the Regional Administrator by EPA Delegations No. 14-14-A, No. 14-14-C, No. 14-14-D, all dated April 15, 1994. This authority was subsequently delegated to the Director of Superfund Division, Region VII, EPA by Delegations No. R7-14-14A, dated April 19, 1999, and No. R7-14-14C and R7-14-14D, dated January 1, 1995.

2. This Consent Order is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice ("DOJ").

3. Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce this Order. By signing this Order, Respondents agree to undertake all actions required by the terms and conditions of this Consent Order and to be bound by its terms. Respondents consent to and hereby agree not to contest the authority or jurisdiction of the United States and the EPA to issue and implement this Consent Order and to enforce its terms in any enforcement proceeding, either administrative or judicial.

4. The EPA has notified the State of Nebraska of the issuance of this Consent Order.

ARTICLE II. STATEMENT OF PURPOSE

5. By entering into this Order, the mutual objective of the Parties is to protect human health and the environment and conduct removal activities and take corrective action to abate the hazards which may be posed by the release, or threat of release, of hazardous substances, pollutants or contaminants at the Agromac - Lockwood Site ("Site"), and to require cash payments by the Respondent to resolve its civil liability under Section 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

response costs incurred and to be incurred by the United States at or in connection with the Site, subject to the reservations of rights included in Article XXV (Reservation of Rights by EPA).

ARTICLE III. PARTIES

6. This Consent Order shall be binding upon Respondent, Agromac International, Inc., and its employees, successors, assigns, representatives, and all persons, agents, contractors and consultants acting under or for the Respondent to conduct any portion of the Work performed pursuant to this Consent Order.

7. Respondent shall provide a copy of this Consent Order (except for Article V, Findings of Fact) and any work plans prepared hereunder to each contractor retained to conduct any portion of the Work performed pursuant to this Consent Order prior to the date such Work is initiated.

8. Any contract entered into by Respondent for the purpose of this Consent Order shall require all Work to be performed, and all services and materials to be supplied, in accordance with this Consent Order.

9. a. No change in ownership interests, including but not limited to any transfer of assets or real or personal property, or in the corporate or other legal status of the Respondent shall alter the Respondent's responsibilities under this Consent Order.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

For a minimum of ten (10) years from the effective date of this Consent Order Respondents shall provide prior written notice to EPA of the transfer of any interest in any real property at the Site. At least sixty (60) days prior to the date of the proposed transfer, Respondent shall notify EPA in writing of such proposed transfer in accordance with the provisions of Article XIII (Notification) here.

b. If there is a change in ownership of the Block P Parcel at the Site, Respondent shall provide a copy of the Consent Order to such other party or parties to the transaction, and provide EPA with a copy of the transmittal letter to such other party or parties to the transaction, showing that the new owner has received a copy of this Consent Order.

10. Each signatory to this Consent Order represents that he or she is authorized to enter into the terms and conditions of this Consent Order and to bind legally the Party represented by him or her.

ARTICLE IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Order, which are defined in CERCLA or RCRA or in regulations promulgated thereunder, shall have the meaning assigned to them in CERCLA or RCRA or in such regulations.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Whenever terms listed below are used in this Order or in any documents attached hereto and incorporated hereunder, the following definitions apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next business day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor department or agencies of the United States.

d. "Escrow Account" shall mean the account established by the Respondent with Platte Valley National Bank in Scottsbluff, Nebraska, with the account number #_____, for deposit of the principal settlement amount required under Paragraph 43 of this Order in Article VIII (Work to be Performed) and in accordance with the companion Bankruptcy Settlement Agreement, In re: Lockwood Corporation, Debtor, BK 93-80133,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Chapter 7, United States Bankruptcy Court for the District of Nebraska. The Escrow Account shall be interest bearing. The Escrow Account, including the principal and interest, shall be established for the benefit of the United States.

e. "Facility" shall mean the manufacturing facility located on Highway 92 East in Gering, Nebraska, and situated in the Southeast quarter of Section 1, Township 21 North, Range 55 West, about 80 acres, more or less, in Scotts Bluff County, Nebraska, all as is further depicted on the Site Map, Attachment 1, attached hereto as Figure 1 and fully incorporated into this Consent Order. The Facility includes the 1.09 acre hazardous waste management unit (HWMU) that is subject to the RCRA Post-Closure Permit. The Facility is subdivided into two parcels, referred to herein as the "Manufacturing Plant Parcel" and the "Block P Parcel". See Attachment 4 for the legal descriptions of both parcels. Notwithstanding the exclusion of the HWMU in said legal description of the Block P Parcel, the Facility includes the 1.09 acre HWMU.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. Section 9507, compounded on October 1, of each year, in accordance with 42 U.S. C. Section 9607(a), and this rate shall apply to Response Costs as defined

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

herein, and described in Article IX (Reimbursement of Response Costs) herein, and not to interest earned on the Escrow Account.

g. "Order" or "Consent Order" shall mean this Administrative Order on Consent and all attachments hereto. In the event of conflict between this Order and any provision of any other agreement, or writing, the terms and conditions of this Order shall control.

h. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

i. "Parties" shall mean the EPA and the Respondent.

j. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq.

k. "Respondent" shall mean Agromac International, Inc.

l. "Settlement Agreement" shall mean the Settlement Agreement reached in the bankruptcy proceedings for Lockwood Corporation, In re: Lockwood Corporation, Debtor, BK 93-80133, Chapter 7. The Settlement Agreement is between Lockwood Corporation, Agromac International, Inc. and the United States.

m. "Site" shall mean the Agromac - Lockwood Superfund Site, which includes the Facility defined herein.

n. "United States" shall mean the United States of America, including its department, agencies and instrumentalities.

o. "Work" shall mean the response actions required under the EPA-approved Remedial Action Plan.

ARTICLE V. FINDINGS OF FACT

For purposes of this Order, EPA finds that:

12. Respondent Agromac International, Inc., ("AII" or "Agromac") is a Nebraska corporation and wholly-owned subsidiary of Agromac Manufacturing, Inc., a Nevada Corporation. Agromac is the owner of the Site with the exception of a 1.09 acre hazardous waste management unit ("HWMU"), which is owned by Lockwood Corporation, a Delaware corporation ("Lockwood" or "Debtor"). In 1993, Lockwood filed a voluntary bankruptcy reorganization petition under Chapter 11 of the Bankruptcy code, 11 U.S.C. § 101, et seq., which was converted by the Bankruptcy Court to a Chapter 7 liquidation proceeding in 1996.

13. The Agromac - Lockwood Site is located on Highway 92 East in Gering, Nebraska. The Site is about 80 acres and is generally in a commercial/agricultural area, however, a few residential homes are nearby. These residents use private shallow aquifer water wells for their drinking water source.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

14. Prior to acquisition by Agromac, the entire Facility was owned by Lockwood, which manufactured and galvanized irrigation equipment and manufactured potato harvesting machines beginning in the early 1970s. In 1996, Agromac bought the Facility and leased the irrigation manufacturing/galvanizing portion of the Block P Parcel to Powerhorse Lockwood Irrigation, Inc. ("PLI"), a defunct Nebraska corporation.

15. PLI was forced into Chapter 7 bankruptcy proceedings in 1999. Due to the likelihood that no assets would be recovered for the benefit of unsecured creditors, upon Bankruptcy Court approval, the Bankruptcy Trustee abandoned assets and closed the estate in April 2001.

16. During operations by Lockwood Corporation through 1984, Lockwood disposed of some of its hazardous wastes in the Waste Acid Evaporation Pond, the 1.09 acre HWMU. Lockwood was unable to "clean close" this unit, and therefore, applied for a RCRA Post Closure Permit and became subject to the requirements of the RCRA Corrective Action Program pursuant to Section 3004(u) of RCRA, 42 U.S.C. Section 6924(u), and is identified as EPA Facility No. NED044101442.

17. In 1989, Lockwood obtained a RCRA Post Closure Permit from the State of Nebraska Department of Environmental Quality (NDEQ) and a RCRA Corrective Action Permit from EPA, Region VII,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

which regulates the post-closure care of the 1.09 acre HWMU and provides for corrective action for six solid waste management units (SWMU) located throughout the Site, including the 1.09 acre HWMU.

18. In 1995, Lockwood began storage of 200 drums of hazardous wastes in a galvanizing pit at its facility. These hazardous wastes were RCRA characteristic for corrosivity (D002), cadmium (D006), chromium (D007), and lead (D008) as identified under the RCRA regulations at 40 CFR §§ 261.22 and 261.24. During this storage period, certain personal property assets of the Lockwood were transferred to Agromac. On or about December 29, 1995, the Debtor entered a month to month lease with Agromac of its real property, including the galvanizing plant and the 1.09 acre HWMU.

19. Storage of hazardous wastes at the galvanizing plant resulted in a release or threat of a release of hazardous substances at the Block P Parcel.

20. In 1996, Agromac expended approximately \$127,000 cleaning up such hazardous wastes. This clean up was completed without an approved RCRA Closure Plan from NDEQ and EPA and without public comment as required by the RCRA regulations, 40 C.F.R. Part 264, Subpart G. Respondent informed NDEQ of the clean up before and during the activity.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

21. From about 1996 to 1999, Agromac's tenant, PLI, attempted to operate the irrigation equipment manufacturing and galvanizing part of the Facility, which was formerly operated by Lockwood Corporation. PLI collected sludge and liquids from the bottom of the galvanizing pit and soil samples from beneath the pit. PLI determined that these sludges, liquids and soils contain hazardous wastes, including RCRA characteristic for lead (D008). In 1997, wastes were removed and disposed. Soils from beneath the galvanizing pit had elevated levels of cadmium, chromium, copper, nickel, zinc and lead that exceed background concentrations for these metals.

22. From about 1997 to 1999, PLI operations included galvanizing. The galvanizing operations included seven large open tanks that held sulfuric acid, flux, phosphorus hydroxide (a base substance), and rinsing liquids. Also, a hot zinc tank for final galvanization. Each tank held about 6,000 gallons of liquids. After 1999, PLI shut down operations and failed to attend to these open tanks and their contents.

23. In 1999, PLI abandoned the spent sulfuric acid from the galvanizing tanks in an outside pit located on the south side of the galvanizing plant. The outside pit is concrete, covered and almost completely underground. It contained about 12,000 gallons of spent sulfuric acid waste.

24. Also in 1999, PLI abandoned chemical products in the Chemical Storage Area at the facility.

25. Sulfuric acid is a hazardous substance under the CERCLA regulations at 40 C.F.R. § 302.4. Sulfuric acid is very corrosive and irritating. Some of the risks associated with exposure to sulfuric acid include direct local effects on the skin, eyes, and respiratory and gastrointestinal tracts when there is direct exposure to sufficient concentrations. Drinking sulfuric acid can burn the mouth and throat and it can erode a hole in the stomach; it has also resulted in death. If sulfuric acid is touched, it will burn the skin. Sulfuric acid in the eyes will cause them to burn and water. Blindness has resulted from sulfuric acid when it was thrown in the face. The term "burn" refers to a chemical burn, not a physical burn resulting from contact with a hot object.

26. The heavy metals cadmium, chromium, copper, nickel, lead and zinc are hazardous substances as defined in the CERCLA regulations at 40 C.F.R. § 302.4. Some of the risks associated with exposure to some of these heavy metals include:

a. Cadmium is a natural element in the earth's crust. It is usually found as a mineral combined with other elements such as oxygen, chlorine, or sulphur. Cadmium does not have a definite taste or odor. Cadmium can dissolve in water and when

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

taken into the body can stay for a long period of time and can build up its concentration from many years of exposure to low levels. Long term exposure to cadmium in water can lead to a build up of cadmium in the kidneys and to possible kidney disease. Other affects from cadmium are: high blood pressure, liver disease, nerve and brain damage, and fragile bones.

b. Chromium is a naturally occurring element found in rocks, soil, plants, animals, and in volcanic dust. Chromium compounds have no taste or odor. All forms of chromium can be toxic at high levels, but chromium(VI) is more toxic than chromium(III). Long term exposures to chromium(VI) can cause damage to the nose and sinuses, and lungs. Ingestion of chromium can cause stomach upsets and ulcers, convulsions, kidney and liver damage, and even death.

c. Lead is a naturally occurring bluish-gray metal found in small amounts in the earth's crust. It has no special taste or smell. Lead can affect almost every organ and system in the body. The most sensitive being the central nervous system, particularly in children. Lead also damages kidneys and the immune system. Exposure to lead is more dangerous for young and unborn children. Unborn children can be exposed to through their mothers. Harmful effects include premature births, smaller babies, decreased mental ability in the infant, learning

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

difficulties, and reduced growth in young children. In adults, lead may decrease reaction time, cause weakness in fingers, wrists, or ankles, and possibly affect the memory. Lead may cause anemia, a disorder of the blood. It can cause abortion and damage the male reproductive system.

d. Zinc has toxic effects particularly for aquatic animals. In animals, high levels of zinc induce copper deficiency and interfere with the metabolism of calcium and iron. In plants, zinc inhibits nitrogen fixation, root development, and causes early leaf drop and wilting.

27. EPA inspected the facility in May 1999, and again in January 2000. The galvanizing pit with the open tanks as well as the outside pit of spent sulfuric acid were not being maintained in accordance with RCRA regulations.

28. There was a substantial threat of a release of hazardous substances from the galvanizing pit into the environment because of the contents of the tanks. In addition, hazardous substances had migrated from said pit into the soil and groundwater. There was a potential threat for additional hazardous substances to escape.

29. In February 2000, a pipe froze in the galvanizing plant and flooded portions of the galvanizing plant including the pit

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

area. The water in the pit could have facilitated the release of hazardous substances into the environment.

30. In 2000, EPA conducted a time-critical removal action to clean up hazardous substances located in the galvanizing plant. EPA incurred approximately \$200,000 in response costs in stabilizing and treating the contents of the outside acid pit, the galvanizing tanks and secondary containment areas, i.e., the galvanizing pit.

31. In 2002, EPA conducted a Removal Site Evaluation (RSE) for the entire Site to evaluate the solid and hazardous waste management units (including the galvanizing plant, the 1.09 HWMU, the Chemical Storage Area, and the other identified SWMUs) and other known releases or threatened releases of hazardous substances that were subject of the RCRA Corrective Action Program. The RSE Final Report was prepared on March 14, 2002.

32. Based on the RSE Report and other information available to EPA, a removal action should be undertaken to abate risks of exposure to hazardous substances at the Block P Parcel. The following actions should be undertaken:

a. excavate, transport and properly dispose of the sludge from the Phase I removal action that remains in the secondary containment structure of the galvanizing plant;

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

b. excavate, transport and properly dispose of remaining slag located in the galvanizing area; and,

c. remove and properly dispose of all chemicals currently stored in the Chemical Storage Area.

33. In conducting the time-critical removal action, the RSE and related response activities, EPA has incurred total response costs at this Site of about \$334,588.64 based on a summary of itemized costs, dated December 2, 2002.

34. Conditions exist at the Site that may result in the actual or potential exposure of trespassers, workers and animals to the hazardous substances or contaminants at the Site. Further conditions exist that threaten the release of hazardous substances and solid wastes into the environment including soil and groundwater at the Site.

35. The United States, Agromac and the Trustee for the Lockwood Bankruptcy have entered into a companion Settlement Agreement pursuant to the Chapter 7 Bankruptcy proceedings. Under the Settlement Agreement the Trustee will transfer all remaining funds formerly secured in a Post Closure Trust Fund for maintenance of the 1.09 acre HWMU to Agromac. Upon receipt of this payment from the Trustee, Agromac will deposit all such funds into an Escrow Account. Agromac will expend all funds and interest earned on the Escrow Account in conducting the Work to

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

be performed under the terms and conditions of this Order. If funds or interest remain in the Escrow Account after all Work is complete, Agromac will pay the balance to the United States in accordance with Article IX (Reimbursement of Response Costs) herein. Furthermore, under the Settlement Agreement the Trustee will transfer title to the 1.09 acre HWMU.

ARTICLE VI. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA has determined that:

36. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

37. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

38. Respondent is an "owner or operator" of a facility, as defined in Section 101(20) of CERCLA, 42 U.S.C. § 9601(20) and within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is a liable party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

39. Sulfuric acid, lead, cadmium, and chromium are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

40. The conditions at the Site, as described in the Findings of Fact, constitute an actual release or a threat of a

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

release of a hazardous substance within the meaning of section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Contingency Plan, 40 CFR § 200.415(b)(2).

41. In response to the release or threatened release of hazardous substances at or from the Facility, EPA undertook response actions at the Facility pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In performing response actions at the Facility, EPA has incurred response costs and will incur additional response costs in the future. Additional response actions, including a time critical removal action, are necessary to abate the continued threat of a release of hazardous substances at or from the Facility.

ARTICLE VII. DETERMINATIONS

42. Based upon the foregoing findings of fact and conclusions of law, the Director, Superfund Division, EPA Region VII, has determined that:

a. The actual and/or threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or to the environment; and,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

b. The actions required by this Order are necessary to protect the public health and welfare and the environment and are not inconsistent with the National Contingency Plan (NCP) and CERCLA.

ARTICLE VIII. WORK TO BE PERFORMED

43. Respondent agrees to, and is hereby ORDERED to:

a. develop and implement a Removal Action Work (RAW) Plan as set forth below to fulfill the objectives set forth in Article II (Statement of Purpose).

b. accept funds from the United States Bankruptcy Trustee in accordance with the companion Bankruptcy Settlement Agreement and deposit all funds received into an interest bearing Escrow Account.

c. accept delivery of title for the 1.09 acre HWMU from the Lockwood Trustee as specified in the companion Settlement Agreement.

d. record a Declaration of Covenants and Restrictions in the office of the recorder of deeds for Scotts Bluff County, Nebraska, in accordance with Article XVII (Deed Restrictions), herein.

44. Respondent agrees to use all funds and interest earned on the Escrow Account to perform the Work in the approved RAW Plan. These funds and interest shall not be used for stipulated

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

penalties or any other costs associated with this Consent Order, except for those costs directly related to performance of the Work herein. If funds or interest remain in the Escrow Account after all Work is complete, Respondent agrees to use the balance of such funds to reimburse the United States in accordance with Article IX (Reimbursement of Response Costs) herein.

45. The RAW Plan shall be developed in accordance with the Statement of Work ("SOW") set forth in Attachment 2, which is hereby incorporated into this Consent Order as if set forth in full. The RAW plan shall be developed as described below in accordance with EPA guidance and with the NCP, 40 C.F.R. Part 300.

a. Respondents shall submit to EPA, for review and approval, the RAW Plan within thirty (30) days of the effective date of this Consent Order.

b. The RAW Plan shall provide for a Removal Action Report to be submitted by Respondents according to the schedule in the approved RAW Plan and the report shall address the items set forth in the attached SOW;

c. The RAW Plan shall include a Quality Assurance Project Plan ("QAPP") for quality assurance, quality control, and chain of custody procedures in accordance with the SOW.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

d. The RAW Plan shall include a Health and Safety Plan ("HASP") to be implemented during the response action and shall be consistent with applicable OSHA regulations. The HASP shall be subject to EPA review and comment, but shall not be subject to EPA approval under the terms of this Consent Order.

e. The RAW Plan shall propose schedules for performance of the Work required by this Consent Order, including the Statement of Work incorporated herein.

46. Within a reasonable time, EPA will review the Work Plans and schedules contained therein for approval or disapproval in accordance with Article XI (Document Review and Approval).

47. Respondents shall implement the plans developed pursuant to this Order, as reviewed and approved by EPA. Respondents shall begin Work under the RAW Plan in accordance with the approved schedule contained therein. The plans and schedules approved by EPA shall be incorporated herein by reference.

48. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and before the Work begins, Respondents shall notify EPA in writing of the names, titles and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

used in preparing the RAW Plan. Within fifteen (15) days after approval of the RAW Plan or such other time as provided in the approved schedule, and before the Work under the RAW Plan begins, Respondents shall notify EPA in writing of the names, titles and qualifications of the personnel including contractors, subcontractors, consultants and laboratories to be used in carrying out the RAW Plan. If EPA disapproves in writing of the technical qualifications of any person(s), Respondents shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. EPA has the right to disapprove of the replacement(s). During the course of the Work, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

ARTICLE IX. REIMBURSEMENT OF RESPONSE COSTS

49. The Respondent shall pay to the EPA Hazardous Substance Superfund the amount of \$65,000.00 together with Interest on the outstanding balance compounded annually, in accordance with the following schedule of payments:

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

20 days after the effective date of this Order	\$16,250.00
September 30, 2004	\$16,250.00 plus Interest
September 30, 2005	\$16,250.00 plus Interest
September 30, 2006	\$16,250.00 plus Interest
 Total Due	 \$65,000.00 plus Interest

The EPA Financial Management Division will calculate the amount of Interest to be paid with each payment and notify the Respondent of the amount approximately one month before the payment due date.

50. The payments to be paid pursuant to the previous Paragraph 49 shall be made to the EPA Hazardous Substance Superfund. If Respondent fails to make any payment under said Paragraph 49 within 30 days of the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue, but shall be computed at the rate in effect under the definition of Interest in Paragraph 11.f., on any unpaid balance through the date of payment.

51. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement identifying the name and address of the Party making the payment, the Site and Facility names, the EPA region, and the Site ID #0722, and the EPA docket number for

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

this action. Also, at the time of payment, the Respondent shall send notice by first class mail that payment has been made to:

E. Jane Kloeckner
Assistant Regional Counsel
U.S.EPA., Region VII
901 North 5th Street
Kansas City, KS 66101

Betty Saladin
PLMG/RFMB
U.S.EPA., Region VII
901 North 5th Street
Kansas City, KS 66101

Kevin Larson, OSC
SPFD
U.S.EPA., Region VII
901 North 5th Street
Kansas City, KS 66101

52. Within 30 days of Respondent's receipt of EPA's Notice of Satisfaction and Completion in accordance with Article XXIX, (Satisfaction and Completion) herein, Respondent agrees to (1) pay to the United States the balance of any funds remaining in the Escrow Account (principal and interest); and, (2) provide to EPA copies of all paid contractor invoices and other expenses incurred in conducting the Work that were paid using the Escrow Account funds. If EPA takes over the Work as provided in Paragraph 62, (Work Takeover), herein, Respondent agrees to pay to the United States the balance of any funds (principal and interest) remaining in the Escrow Account within five (5) days of date EPA assumes performance.

a. Any payments under this Paragraph shall be made in accordance with the payment instructions and notice procedures described in the preceding Paragraph 51.

b. The total amount to be paid by Respondent pursuant to this Paragraph 52 shall be deposited in the Agromac - Lockwood

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

ARTICLE X. MONITORING AND QUALITY ASSURANCE

53. If required by EPA, samples analyzed by a laboratory pursuant to this Order shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the documents entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" (October 1986) and "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis" (July 1985) (hereinafter "Contract Lab Statements of Work").

54. If required by EPA, sample collection and laboratory analysis shall be performed in compliance with EPA-approved methods, including timing of analysis, documentation of sample collection, handling and analysis, as described in the Contract Lab Statements of Work. Field screening shall be performed in compliance with SW-846 4000 series methods.

55. Laboratory deliverables for all analytical work performed pursuant to this Order, as specified in the Contract Lab Statements of Work, shall be submitted to EPA in accordance with the schedules set forth herein. Any deviations from the

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

procedures and methods set forth in these documents must be approved in writing by EPA prior to use.

56. Respondents shall use the quality assurance, quality control, and chain of custody procedures specified in the QAPP as approved by EPA for all sample collection and analysis performed pursuant to this Order.

57. If required by EPA, laboratories analyzing samples pursuant to this Order shall perform, at Respondents' expense, analyses of samples provided by EPA to demonstrate the quality of each such laboratory's analytical data.

58. Respondents shall ensure that EPA representatives are allowed access, for auditing purposes, to all laboratories and personnel utilized by Respondents for sample collection and analysis and other field work.

ARTICLE XI. DOCUMENT REVIEW AND APPROVAL

59. Within a reasonable time, EPA will review documents submitted by Respondents and notify Respondents, in writing, as to its approval or disapproval thereof. In the event of EPA's disapproval of a document, within twenty (20) calendar days of receipt of the EPA comments on the document or such longer time as agreed upon by EPA, Respondents shall amend the document in accordance with those comments or as otherwise agreed upon by EPA, and shall submit the amended document to EPA. EPA will make

the final determination as to whether the document submitted by Respondents is in compliance with the requirements of this Consent Order. EPA may either accept and approve the resubmittal, modify it, or disapprove it.

60. Reports, plans, specifications, and schedules submitted pursuant to this Order are, upon approval by EPA, incorporated into this Order. Any noncompliance with such EPA-approved reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this Consent Order.

ARTICLE XII. ADDITIONAL WORK

61. During the course of the Work performed pursuant to this Consent Order, EPA may determine that sampling, analysis, reporting or other tasks, in addition to those specifically set forth herein, are necessary to satisfy the purposes of this Order. If EPA so determines, it will advise Respondents in writing of the nature of the additional tasks and the basis for EPA's determination. Subject to resolution of any dispute pursuant to Article XXVIII (Dispute Resolution), Respondents shall undertake, perform and complete all such additional tasks and provide such documents and reports required by EPA in addition to those provided for herein. The additional Work shall

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

be completed in accordance with the standards, specifications, and schedules determined or approved by EPA.

62. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Article XXVIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. If EPA assume the performance of all or any portion of the Work, Respondent shall pay to the United States the balance of any funds (principal and interest) remaining in the Escrow Account in accordance with Article IX (Reimbursement of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

ARTICLE XIII. NOTIFICATION

63. Verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

requested or required to be submitted to EPA pursuant to this
Consent Order shall be directed to:

Kevin Larson, On-Scene Coordinator
Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-5106; FAX (913) 551-7063

64. Verbal notices and written communications to
Respondents under this Consent Order shall be directed to:

AGROMAC International, Inc.
Post Office Box 100
Scottsbluff, Nebraska 69363-0100

65. The Respondents or EPA may change the person designated
to receive notification under this Consent Order by providing
written notification of the change to the other Party.

ARTICLE XIV. REPORTING

66. In the course of the activities more specifically
stated in the RAW Plan, Respondents shall submit to EPA a
Prefinal Inspection Report and a written Final Removal Report.

67. Within twenty (20) days after the prefinal inspection,
Respondents shall submit to EPA for review and approval a
Prefinal Inspection Report prepared in accordance with the SOW
attached hereto.

68. Within sixty (60) days after completion of all removal
actions required under this Consent Order, Respondents shall
submit to EPA for review and approval a final removal action

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

report summarizing the actions taken to comply with this Consent Order prepared in accordance with the SOW attached hereto. The final report shall include a listing of quantities and types of materials removed from the Site or handled on-Site, a listing of the ultimate destination of any hazardous substances removed from the Site, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

69. Nothing contained in this Consent Order shall be construed as restricting EPA's authority to request information under federal law.

ARTICLE XV. CONFIDENTIAL BUSINESS INFORMATION

70. Respondents may assert a business confidentiality claim, under the procedures set forth in 40 C.F.R. Part 2,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

covering part or all of the information submitted pursuant to the terms of this Consent Order. The information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 C.F.R. Part 2. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to Respondents.

ARTICLE XVI. ACCESS TO THE SITE

71. Commencing upon the effective date of this Consent Order, the Respondents agree to provide EPA with access at all reasonable times to any area within the Block P Parcel and, with 24 hours advanced verbal or written notice by EPA to Agromac for any area within the Manufacturing Parcel, to which access is required for the implementation of this Consent Order, to the extent that access to the Facility is controlled by the Respondents. EPA and its authorized representatives shall have authority to enter and freely move about the property at all times for the purposes of, *inter alia*: inspecting records; reviewing the progress of the Respondents in carrying out the provisions of this Consent Order; conducting such tests and taking such samples as EPA deems necessary; using a camera, video camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by Respondents or on

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Respondents' behalf. Respondents shall permit EPA and its authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this Consent Order.

72. Nothing contained in this Consent Order shall be construed as restricting the inspection or access authority of EPA under federal law.

ARTICLE XVII. DEED RESTRICTIONS

73. Within thirty (30) days after the effective date of this Order, the Respondent shall record with the office of the register of deeds for Scotts Bluff County, Nebraska, or secure the recording thereof, a Declaration of Covenants and Restrictions in the form substantially similar to Attachment 3 to this Consent Order (Restrictive Covenants). The Restrictive Covenants shall touch and concern the land and be attached to the Block P Parcel and the 1.09 acre HWMU.

a. Purpose: The purpose of the Restrictive Covenants is to protect the 1.09 acre HWMU (the benefitted interest) and the Block P Parcel (the burdened interest, which originally included the HWMU) from the release or threatened release of hazardous substances from the HWMU.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

b. Duration & Reason: Under the terms of the Restrictive Covenants, the Respondent, its heirs, successors and assigns, agree to operate and maintain the HWMU in accordance with the RCRA Post Closure Permit issued by NDEQ until termination of said Permit. Each subsequent instrument conveying any interest in the Block P Parcel or the HWMU shall reference the Restrictive Covenants. Without the Restrictive Covenants, the Block P Parcel could be sold excluding the HWMU leaving the Respondent, which has limited financial capacity, owning the HWMU. Respondent may not have sufficient capacity to continue operation and maintenance of the HWMU without owning the adjacent Block P dominate parcel.

ARTICLE XVIII. EPA OVERSIGHT

74. The EPA may appoint an On-Scene Coordinator ("OSC") who shall have the authority vested by the NCP at 40 C.F.R. Part 300. This includes the authority to halt, conduct or direct any activities required by this Consent Order or any response actions or portions thereof. The OSC, or any person designated by the OSC, shall have the right to move freely about the Site at all times when Work is being carried out pursuant to this Consent Order and the attached Statement of Work. In the event an OSC is not appointed, a Remedial Project Manager or his or her designee shall be vested with the oversight authority described above.

ARTICLE XIX. INDEMNIFICATION

75. Neither the United States nor any agency or agents or employees thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, and the Respondents' employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Consent Order, nor shall the United States or any agency or agents or employees thereof be represented to be a party to any contract entered into by Respondents in carrying out activities pursuant to this Consent Order.

76. Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents and employees from any and all claims or causes of action arising from or on account of any acts or omissions of Respondents or their officers, employees, receivers, trustees, agents, contractors, subcontractors or assigns, in carrying out any activities pursuant to this Consent Order. Respondents agree to pay any litigation costs incurred by the United States Government arising out of claims made against the United States based on acts or omissions of Respondents as described herein.

ARTICLE XX. OTHER APPLICABLE LAW

77. The actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations, including but not limited to the provisions of 42 U.S.C. § 9621(d)(3) as further defined in the EPA "Off-Site Rule", 40 C.F.R. § 300.440.

ARTICLE XXI. FORCE MAJEURE

78.. Respondents shall perform the requirements of this Consent Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not foreseeable and beyond the control of Respondents, or their consultants and contractors, that delays or prevents performance by a date required by this Consent Order despite Respondents' best efforts to fulfill the obligation. Such events do not include unanticipated or increased costs of performance or changed economic circumstances.

79. Respondents shall notify EPA in writing no later than 10 days after Respondents become aware of events that Respondents knows or should know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, a descrip-

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

tion of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Article shall constitute a waiver of Respondents' right to assert a *force majeure*.

80. If EPA determines that the delay has been or will be caused by a *force majeure*, the time for performance of that element of Work shall be extended for a period equal to the delay resulting from such circumstances unless otherwise specified by EPA. Such an extension does not alter the schedule for performance or completion of other tasks required by the Work Plan which are not affected by the *force majeure*.

ARTICLE XXII. RECORD PRESERVATION

81. Respondents shall preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after its termination, all records and documents in its possession or in the possession of its employees, agents, accountants, or contractors that relate in any way to the Work performed pursuant to this Consent Order, notwithstanding any document retention policy to the contrary.

ARTICLE XXIII. SUBSEQUENT MODIFICATION OR AMENDMENT

82. The OSC may make modifications to any plan, schedule or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

83. If Respondent seeks permission to deviate from any approved work plan, schedule or the SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to the preceding Paragraph 82, herein.

84. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

ARTICLE XXIV. COVENANT NOT TO SUE BY EPA

85. Except as specifically provided in Section XXVI (Reservations of Rights by EPA), EPA covenants not to sue or to

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Article IX, Paragraph 49 (Reimbursement of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Respondent of its obligations under this Agreement, including but not limited to, payment of all amounts due under Article IX, (Reimbursement of Response Costs), any amount due under Article XXX (Failure to Comply), and the recording of the deed restrictions under Article XVII (Deed Restrictions). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Respondent shall forfeit all payments made pursuant to this Order and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Respondent's false or materially inaccurate information. This covenant not to sue extends only to the Respondent and does not extend to any other person.

ARTICLE XXV. RESERVATION OF RIGHTS BY EPA

86. The United States reserves, and this Consent Order is without prejudice to, all rights against the Respondent with respect to all matters not expressly included within the Covenant Not to Sue by the EPA in Paragraph 85, Article XXIV.

Notwithstanding any other provision of this Consent Order, EPA reserves all rights against Respondent with respect to:

- a. liability for failure of Respondent to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon the ownership or operation of the Facility or any activity with respect to a hazardous substance or a solid waste at or in connection with the Facility, arising after signature of this Consent Order by Respondent; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

87. Notwithstanding any other provision of this Order, EPA reserves, and this Agreement is without prejudice to, the right to re-institute or reopen this action, or to commence a new

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

action seeking relief other than as provided in this Order, if the Financial Information provided by Respondent, or the financial certification made by Respondent in Article XXXI (Certification), is false or, in any material respect, inaccurate.

88. Nothing in this Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Order.

89. Reservation of Rights for Changed Financial Circumstances.

a. Notwithstanding any other provision of this Order, the United States reserves, and this Order is without prejudice to, the right to reinstitute or reopen this matter, or commence a new action under CERCLA, if the Respondent's financial circumstances significantly improve at any time within 10 years of the effective date of this Order. A significant improvement in Respondent's financial circumstances includes but is not limited to an improvement due to the sale of the Facility.

b. In the event of a sale of either the Manufacturing Parcel and/or the Block P Parcel, sold separately or together,

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

the Respondent agrees to pay EPA an amount equal to 40 percent (40%) of the sale proceeds over the current base value for each parcel based on the 2002 Real Estate Tax Statements:

Block P Parcel = \$697,587

Manufacturing Parcel = \$3,090,373

In no event shall Respondent pay more than the balance of unreimbursed response costs including Interest incurred by EPA. Payments shall be made within 5 days of closure on the sale and in accordance with the procedures described in Article IX Reimbursement of Response Costs.

ARTICLE XXVI. COVENANT NOT TO SUE BY RESPONDENT

90. Subject to the reservations in Paragraph 91, Respondent agrees not to assert any claims or causes of action against the United States, or its employees, with respect to the Facility or this Consent Order, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C.

§ 9507, which is based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Facility; and

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Facility.

91. The Respondent reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of plans or activities for the facility. The forgoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

92. Nothing in this Consent Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

ARTICLE XXVII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

93. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and the Respondent each reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Facility against any person not a Party hereto.

94. The Parties agree that the Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The "matters addressed" are all response actions taken and to be taken and all response costs incurred and to be incurred, at or in connection with the Facility, by the United States or by any other person. The "matters addressed" do not include those response costs or response actions as to which EPA has reserved its rights under

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Article XXV. (Reservation of Rights by EPA) of this Consent Order (except for claims for failure to meet a requirement of this Order), in the event that EPA asserts rights against Respondent coming within the scope of such reservations.

95. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses which are based upon the contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 85, Article XXIV (Covenant not to Sue by EPA).

96. This Order is not intended to be nor shall it be construed to be a permit.

ARTICLE XXVIII. DISPUTE RESOLUTION

97. The parties to the Consent Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

98. If the Respondent disagree, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Consent Order, including a demand for additional Work, the Respondents may invoke the Dispute Resolution procedures of this Consent Order by notifying EPA of its objection within ten (10) days of the Respondents' receipt of that EPA disapproval, decision or directive, and providing EPA with a written Statement of Dispute within ten (10) additional days thereafter. The Respondents' written Statement of Dispute shall set forth the specific points of the dispute, the position the Respondents maintain should be adopted as consistent with the requirements of this Consent Order, the factual and legal bases for the Respondents' position, and all matters considered necessary for EPA's determination.

99. The EPA and the Respondent shall then have a negotiation period of an additional fourteen (14) days from EPA's receipt of the Respondent's written Statement of Dispute to attempt to resolve the dispute. The negotiation period may be extended by mutual agreement. If agreement is reached, the resolution shall be reduced to writing, signed by each party and incorporated into this Consent Order.

100. If the parties do not reach agreement within the negotiation period, the matter shall be referred to the EPA's

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Region VII Superfund Division Director. The Superfund Division Director shall decide the matter and provide a written statement of his decision to both parties, which shall be incorporated into this Consent Order. The Superfund Division Director may at his or her sole discretion receive additional information from the parties prior to his decision.

101. No action, decision, or directive made by EPA, including without limitation the Superfund Division Director pursuant to this Consent Order, shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel the Respondents' compliance with this Consent Order.

102. The Respondent is not relieved of their obligation to perform and conduct activities and submit deliverables in accordance with the schedule set forth in this Consent Order while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Consent Order. If, however, the Respondent prevails in the dispute, the compliance obligations or deadlines specifically affected by the matters in dispute shall be extended for a period equal to the time taken to resolve the dispute under the procedures of this Article unless the parties agree on some other period of time. The questions of whether and in what

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

amounts the Respondent shall be liable for stipulated penalties which accrued during or on account of the dispute resolution process shall be resolved in the written agreement of the parties when the dispute is resolved by agreement or in the EPA's written decision when the dispute is resolved by decision of the Superfund Division Director.

ARTICLE XXIX. SATISFACTION AND COMPLETION

103. The requirements of this Consent Order shall be deemed satisfied upon written notice from EPA to Respondent stating that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order have been completed.

ARTICLE XXX. FAILURE TO COMPLY AND STIPULATED PENALTIES

104. Unless there has been a written modification of a compliance date by EPA pursuant to Article XXIII (Subsequent Modification or Amendment) or as a result of a resolution pursuant to Article XXVIII (Dispute Resolution), or a force majeure determination by EPA pursuant to Article XXI (Force Majeure), in the event the Respondents fail to meet any of the following requirements of this Consent Order, Respondents shall pay stipulated penalties as set forth below. Compliance by Respondents with this Consent Order shall include completion of an activity under this Consent Order or a plan approved under this Consent Order in a manner acceptable to EPA, and within the

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

specified time schedules in and approved under this Consent Order.

105. The stipulated penalties for violations relating to this Consent Order shall accrue as follows:

a. For failure to submit the Work Plan or the Removal Action Report in a timely manner as required by this Consent Order and the SOW:

i. \$200 per day for the first through seventh days of noncompliance;

ii. \$500 per day for the eighth through the thirtieth days of noncompliance; and

iii. \$1000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

b. For failure to submit a copy of the recorded Declaration of Covenants and Restrictions, as required in Article XVII (Deed Restrictions) above, in a timely and adequate manner as required by this Consent Order and the SOW:

i. \$200 per day for the first through the seventh days of noncompliance;

ii. \$500 per day for the eighth through the thirtieth days of noncompliance and;

iii. \$1000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

c. For failure to resubmit the Work Plan or the Removal Action Report after EPA disapproval of a previous submission pursuant to Article XI (Document Review and Approval), in a timely and acceptable manner as required by this Consent Order and the SOW:

i. \$300 per day for the first through seventh days of noncompliance;

ii. \$600 per day for the eighth through the thirtieth days of noncompliance and;

iii. \$2000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

106. All penalties shall begin to accrue on the date that complete performance is due or non-compliance occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

107. All penalties owing under this Article shall be due within thirty (30) days of receipt by Respondents of written demand by EPA for payment thereof. Interest shall begin to accrue on the unpaid balance at the end of this thirty (30) day period. Interest will accrue on the unpaid balance until such

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

penalties and interest have been paid in full and will be compounded annually.

108. All penalties shall be paid by certified or cashier's check made payable to the "EPA Hazardous Substance Superfund", and shall be remitted to:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, PA 15251

All payments shall reference the EPA Docket Number which appears on the face of this Consent Order and the Site name and identification number ("A722"), and shall indicate that they are in payment of stipulated penalties. A copy of the transmittal of payment shall be sent to EPA's Project Coordinator.

109. The stipulated penalties set forth in this Article do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order, nor shall payment of said penalties relieve Respondents of the responsibility to comply with this Consent Order.

110. Respondent is advised that, under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), Respondents' willful violation or failure or refusal to comply with any provision of this Consent

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

Order may subject Respondents to a civil penalty. Under section 107(c) (3) of CERCLA, 42 U.S.C. § 9607(c) (3), Respondent's failure to comply with any portion of this Consent Order applicable to it may subject Respondent to punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of such failure to take proper action.

ARTICLE XXXI. CERTIFICATION

111. By signing this Agreement, the Respondent certifies that, to the best of its knowledge and belief, Agromac International, Inc. and Agromac Manufacturing, Inc. have:

a. conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed to EPA, the information requested by EPA, which was in their possession, or in the possession of their officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Facility, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Facility;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their respective potential liability regarding the Facility, after notification of potential liability;

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

c. fully complied with any and all EPA requests for information regarding the Facility pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and,

d. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Respondent executes this Order.

ARTICLE XXXII. SEVERABILITY

112. If any judicial or administrative authority issues an order that invalidates any provision of this Consent Order, or finds that Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, then Respondent shall remain bound to comply with all other provisions of this Consent Order.

ARTICLE XXXIII. SIGNATURE BY PARTIES

113. This Consent Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

ARTICLE XXXIV. PUBLIC COMMENT

114. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

ARTICLE XXXV. ATTORNEY GENERAL APPROVAL

115. The Attorney General or his designee has approved the settlement embodied in this Consent Order in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

ARTICLE XXXVI. EFFECTIVE DATE

116. The effective date of this Consent Order shall be the date on which EPA issues written notice that the public comment period pursuant to Paragraph 114 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

IN WITNESS WHEREOF, the undersigned parties have affixed their signatures below in the matter of AGROMAC - LOCKWOOD SITE, DOCKET NO. CERCLA-07-2003-0302.

For AGROMAC INTERNATIONAL, INC.,

I certify that I am a duly authorized representative of Agromac International, Inc.:

JOSEPH SCHON
President
Agromac International, Inc.
Post Office Box 100
Scottsbluff, Nebraska 69363-0100

9-16-03
Date

For THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII:

E. JANE KLOECKNER
Sr. Assistant Regional Counsel
US EPA Region VII
901 North Fifth Street
Kansas City, Kansas, 66101

10/31/03
Date

IT IS SO ORDERED:

Cecilia Tapia
Director
Superfund Division
US EPA Region VII
901 North Fifth Street
Kansas City, Kansas 66101

12/17/03
Date

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

IN WITNESS WHEREOF, the undersigned parties have affixed their signatures below in the matter of AGROMAC - LOCKWOOD SITE, DOCKET NO. CERCLA-07-2003-0302.

For the U.S. Department of Justice:

CATHERINE McCABE
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

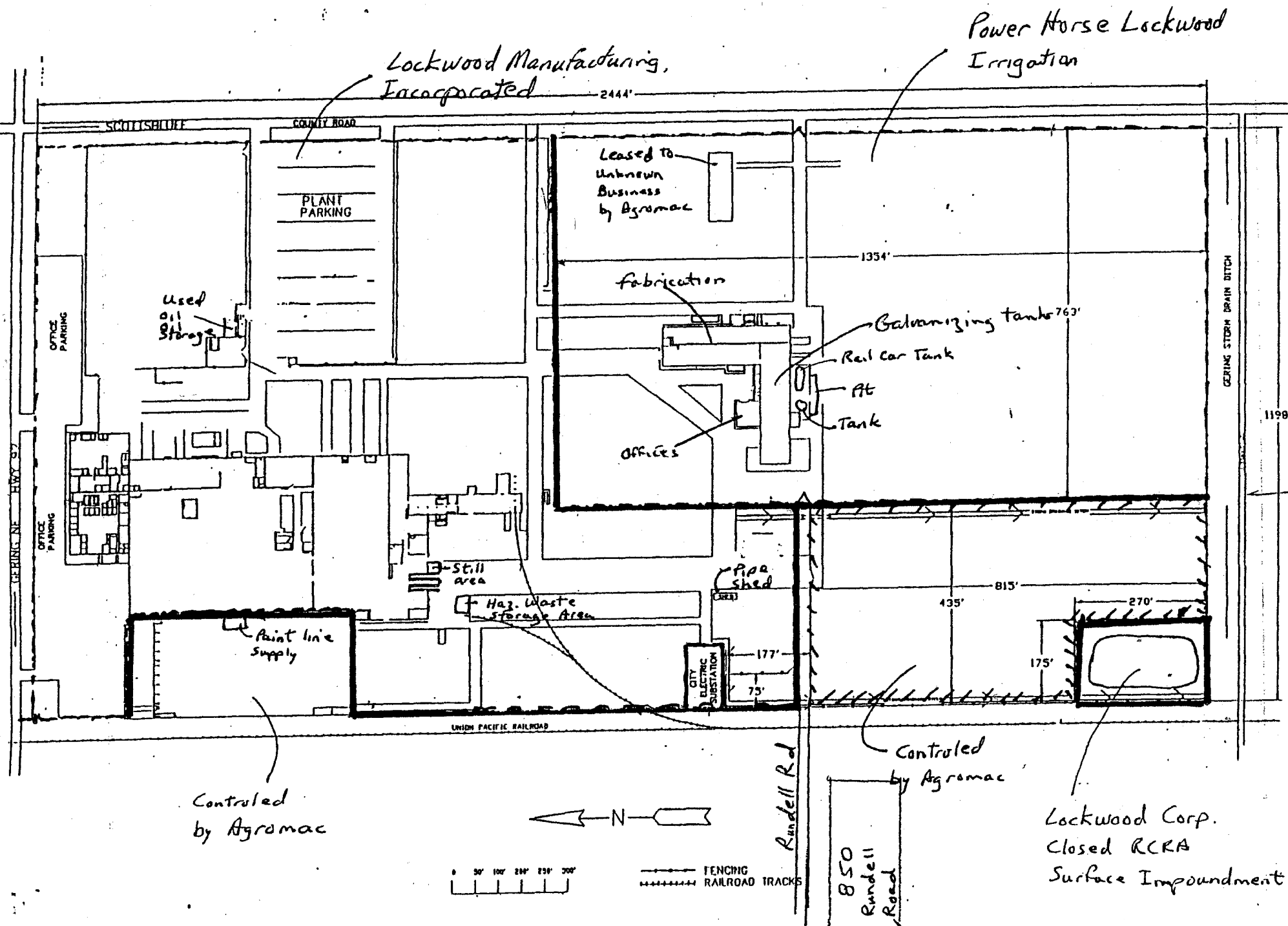
5/1/04
Date

NEIL COWIE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

4/19/04
Date

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT 1
Figure 1: Site Map



AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT 2
Statement of Work

**STATEMENT OF WORK
FOR THE REMOVAL ACTION
AT THE
AGROMAC-LOCKWOOD SITE
GERING, NEBRASKA**

PURPOSE

1. The purpose of this Scope of Work (SOW) for the Agromac-Lockwood Site (Site) is to define the tasks, standards and guidelines which shall be followed by the Respondent (1) to conduct a time critical removal action to remove and properly dispose of contaminated sludge and slag; (2) to remove and properly dispose of chemicals currently stored at the Site. In accomplishing the above purposes, the Respondent shall comply with the provisions of the corresponding Administrative Order on Consent (CONSENT ORDER) between the United States Environmental Protection Agency (EPA) and Agromac International, Inc. (Respondent), this SOW, CERCLA, the National Contingency Plan (NCP) and EPA guidance (including, but not limited to the guidance documents referenced in this SOW). The schedule and statement of work to be performed under the CONSENT ORDER is set forth hereinafter.

WORK TO BE PERFORMED

2. Respondent shall perform the tasks set forth below in designing and implementing the work required for the Site. Additionally, Respondent shall insure the design and implementation of EPA's chosen remedy meets or exceeds the performance standards, specifications and applicable or relevant and appropriate requirements (ARARs) set forth below. The work required shall consist of the following three tasks:

TASK I: Preparation of Removal Action Workplan (RAW)

TASK II: Performance of Removal Action

TASK III: Reports

TASK I: Removal Action Work plan:

3. Within thirty (30) days of the effective date of the Consent Order, Respondent shall prepare and submit to EPA for review and approval, a Removal Action Workplan (RAW) that shall describe the proposed tasks and schedules associated with excavation, processing and offsite disposal of the sludge remaining from the galvanizing operation along with the slag remaining from the galvanizing dipping operation, in addition, the proposed disposal method for the chemicals stored in the Chemical Storage Area of the Site. The RAW shall be prepared to require the response action to be performed in accordance with standards set forth in Task II,

below, and shall include the following information:

- A. A clear and concise description of roles, relationships and assignment of responsibilities among the Respondent, Project Coordinator, Quality Assurance Officer, Construction Supervisor and Construction Personnel;
 - B. A proposed schedule for the removal action that will indicate the proposed starting date for removal activities and the anticipated completion date;
 - C. A detailed description of site preparation activities, including establishment of security and control, establishment of work and support areas, and definition of decontamination areas;
 - D. A description of the method of transportation for all contaminated materials, manifesting requirements in accordance with federal and state Department of Transportation (DOT) regulations, and material quantity accounting procedures. In addition, Respondent shall provide written notice prior to any out-of-state shipment of waste material;
 - E. A detailed description of the sampling and quality assurance/quality control (QA/QC) measures to be taken during the sampling activities;
 - F. A description of Site restoration requirements after completion of removal action. This description shall include all work necessary to restore property to its original pre-removal condition; and
 - G. A plan for identifying and complying with applicable permitting requirements and environmental statutes.
4. As components of the Removal Action Workplan, Respondent shall develop and submit the following project plans to support field activities:
- A. Sampling and Analysis Plan (SAP); and
 - B. Health and Safety Plan (HSP)
5. The Sampling and Analysis Plan (SAP) shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs to characterize the site. No field activities shall take place until EPA has reviewed and approved the SAP. The SAP shall consist of two parts:
- A. **A Field Sampling Plan (FSP)** which describes the estimated number, type, and location of samples to be collected at the site to further define the extent of contamination or to confirm when certain actions have achieved the desired results, or to conduct tests on the material for treatability. Respondents

shall include provisions for split samples provided to EPA, its contractors, or the State of Nebraska as appropriate. No less than five (5) working days notice must be given to EPA prior to collecting samples. The plan shall also include the types of analyses to be conducted for each sample and a brief rationale for collecting the sample and performing the analysis.

B. A **Quality Assurance Project Plan (QAPP)**, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action. The QAPP shall be written in accordance with a category III project as described in "Preparing Perfect Project Plans", U.S. EPA, Office of Research and Development, EPA/600/9-89/087, October 1989.

6. The FSP shall require that all sample collection and analysis be performed in compliance with EPA approved methods, including timing of analysis and documentation of sample collection, handling, and analysis. Any proposed sampling scheme shall be capable of producing representative and statistically valid samples, and generally conform to the following EPA guidance documents:

A. Compendium of ERT Field Analytical Procedures - Office of Emergency and Remedial Response, Publication 9360.4-04, May 1992.

B. Compendium of ERT Waste Sampling Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/008, January 1991.

C. QA/QC Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures - Office of Emergency and Remedial Response, EPA/540/G-90/004, April 1990.

D. Removal Program Representative Sampling Guidance, Volume 1: Soil - Office of Emergency and Remedial Response, publication 9360.4-10, November 1991.

E. Compendium of ERT Soil Sampling and Surface Geophysics Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/006, January 1991.

7. The FSP shall require that all samples shall be analyzed by a laboratory that participates in a quality assurance/quality control program equivalent to that specified in, "USEPA Contract Laboratory Program Statement of Work for Analysis", Exhibit E, EPA SOW No. 788, July 1988.

8. The **Health and Safety Plan**, shall be prepared in accordance with 40 C.F.R. Part 300.150 and all applicable OSHA requirements at 29 C.F.R. 1910. In addition to the requirements addressed in these regulations, this plan shall generally follow the

guidelines established in EPA's "Standard Operating Safety Guides", Office of Emergency and Remedial Response, publication 9285.1-03, June 1992.

Task II: Performance of Removal Action

9. The Removal Action shall be conducted in accordance the following performance standards, as set forth in the approved RAW:

- A. Respondent shall excavate, transport and properly dispose of the sludge remaining in the secondary containment structure of the galvanizing plant.
- B. Respondent shall excavate, transport and properly dispose of the slag remaining from the galvanizing operation.
- C. Respondent shall remove and properly dispose of all chemicals currently stored in the Chemical Storage Area.
- D. If on-site storage of contaminated materials is necessary at any time during the removal activity, such material must be stored in such a manner as to prevent migration of contaminants.

10. Upon EPA approval of the RAW, Respondent shall construct and implement the Removal Action in accordance with the approved designs, schedules and plans contained therein. Respondent shall document completion of the Removal Action in accordance with the following procedures:

A. Prefinal Inspection and Report: Upon preliminary completion of the removal action, Respondent shall contact EPA for the purpose of scheduling and conducting a prefinal site inspection with EPA. The prefinal inspection shall consist of a walk-through inspection of the entire project site. The purpose of the prefinal inspection will be to determine whether the removal action has been completed consistent with the approved RAW.

- i. Within five (5) days of the prefinal inspection, Respondent shall submit to EPA, for review and approval, a Prefinal Inspection Report that will document all unfinished removal action work discovered during the prefinal inspection.
- ii. Within the Prefinal Inspection Report, Respondent shall outline the actions required to resolve all outstanding removal action work and shall propose a schedule to complete these items.
- iii. Within the Prefinal Inspection Report, Respondent shall also certify that all other removal work has been completed in a manner sufficient to meet the requirements of the approved RAW.

iv. Respondent shall provide a copy of the Prefinal Inspection report to all property owners on whose property access was required to complete the Removal Action.

B. Final Inspection: Upon completion of any outstanding removal action work, Respondent shall notify EPA for the purpose of scheduling a final site inspection.

i. The final inspection shall consist of a walk-through inspection by EPA and Respondent of the project site.

ii. The Prefinal Inspection Report will be used as a checklist with the final inspection focusing on the outstanding removal work items identified in the prefinal inspection.

C. Certification of Completion: Upon confirmation that the purpose, intent and requirements of the RAW have been satisfied, in conformance with engineering practice, EPA shall provide Respondent a written certification of completion of the Removal Action.

TASK III - Reports

- Submit Monthly Progress Reports - tenth (10) day of each month following effective date of CONSENT ORDER until receipt of the EPA Certification of Completion.

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT 3
Declaration of Covenants and Restrictions

AGROMAC - LOCKWOOD SUPERFUND SITE

**DECLARATION OF RESTRICTIVE COVENANTS FOR
ENVIRONMENTAL PROTECTION**

This Declaration of Restrictive Covenants for Environmental Protection is made this _____ day of _____, 2003 by Agromac International, Inc.

WITNESSETH:

A. WHEREAS, Agromac International, Inc. (AII) is the owner of the real property known as the Agromac-Lockwood Superfund Site and consisting of approximately 80 acres, consisting of two parcels, the manufacturing parcel and the Block P parcel, all located in Gering, Nebraska, and legally described in Attachment A, attached and made a part of this instrument (the Site); and,

B. WHEREAS, in 1989, the former owner and operator of the Site, Lockwood Corporation, obtained from the State of Nebraska Department of Environmental Quality (NDEQ) a Post Closure Permit (the Permit) for a 1.09 acre hazardous waste management unit (the HWMU). The permit was issued pursuant to the authority of the Resource Conservation and Recovery Act (RCRA); and,

C. WHEREAS, in 1993 Lockwood Corporation filed a bankruptcy petition under Chapter 11, Reorganization, which was converted to a Chapter 7 liquidation proceeding in 1996. During the bankruptcy proceedings, creditors bifurcated the Block P Parcel by excluding the 1.09 acre HWMU in certain agreements describing loan collateral. Creditors foreclosed on the Site, and, to avoid environmental responsibility for the RCRA Permit, excluded 1.09 acre HWMU from the foreclosure proceedings; and,

D. WHEREAS, Lockwood Corporation Debtor, retained ownership of the HWMU and responsibility for the RCRA Post Closure Permit after the foreclosure, and,

E. WHEREAS, in 2003, Lockwood Corporation Debtor transferred all its interests in and title to the HWMU to AII, which **ended** the bifurcation of the Block P Parcel. Transfer of this property to AII, pending NDEQ approval, will also transfer responsibility for RCRA Permit to AII; and,

F. WHEREAS, because of the formerly bifurcated status of the Block P Parcel, this declaration of restrictive covenants for environmental protection is necessary to ensure that the owner of the benefitted parcel (the 1.09 acre HWMU) will be protected from liability from potential release of hazardous substances into the environment by requiring the owner of the burdened parcel (the balance of the Block P parcel) to take responsibility for the RCRA Permit; and,

G. WHEREAS, in an Administrative Order on Consent issued on _____, 2003, (the Order) by the United States Environmental Protection Agency, Region VII (EPA), AII agreed to record with the Scottsbluff County Register of Deeds a restrictive covenant that touches and

concerns and runs with the land on the Block P Parcel; and,

C. WHEREAS, in the Order, AII identified two pieces of property that are subject of this restrictive covenant including: (1) the Block P Parcel of the Site (the Property), legally described in Attachment B, hereby attached and made a part of this instrument; and, (2) the 1.09 acre HWMU, legally described as an exclusion from the Property, see Attachment B; and,

D. WHEREAS, the purpose of this restrictive covenant that touches and concerns and runs with the Property and the HWMU is to provide assurance that present and future owners of the Property agree to own and operate the HWMU, in accordance with the requirements of the Post Closure Permit issued under the RCRA, Permit Identification #NED044101442 (the Permit) issued by the State of Nebraska, Department of Environmental Quality (NDEQ); and,

E. WHEREAS, if the Permit is terminated by NDEQ, the purpose of this restrictive covenant will be completed and the covenant may terminate; and,

F. WHEREAS, AII, the current owner, agrees to use the HWMU in accordance with the Permit conditions and impose use restrictions that will touch and concern and run with the Property for the purpose of protecting the property value of the Property and protecting human health and the environment from the threat of a release of hazardous substances from the HWMU.

NOW THEREFORE:

1. AII, on behalf of itself, its successors and assigns, in consideration of the terms of the aforesaid Order, hereby covenants and declares that the Property shall be subject to the restrictions on use set forth below. AII may enforce said use restrictions for the purposes hereinafter set forth.

2. It is the purpose of this instrument to give to the Third Party Beneficiary, EPA, the right to enforce the use restrictions, as defined in paragraph 3, herein, in order to assure that the Property and the HWMU will be protected and used in accordance with the RCRA Post Closure Permit, Identification #NED044101442, and will not be used in a manner that would cause residential development or other development inconsistent with said Permit.

3. The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on AII, its successors and assigns and transferees:

a. Unless approved in writing by the EPA or its assigns, the Property and the HWMU shall not be used for residential purposes; and,

b. Unless otherwise approved in writing by the EPA or its assigns, the Property owner shall maintain and operate the HWMU in accordance with the requirements of the RCRA Permit.

4. The above restrictive covenants, conditions and restrictions may be modified or terminated in whole or in part, only upon the written approval of the EPA or its assigns. If AII or

its successors in interest seek to modify or terminate the restrictive covenants, conditions or restrictions, it may file a petition with the EPA setting forth the nature of the proposed change, the reasons therefor, and any expected impact of the changes on the response action, the public health, and the environment. AII may undertake a use or activity inconsistent with the restrictions in Paragraph 3 only if the EPA or its assigns determines to allow such use or activity to be implemented pursuant to an approved plan. If requested by AII, such writing shall be executed in recordable form.

5. The covenants contained herein shall be deemed covenants that touch and concern and run with the land, and shall remain in full force and effect until the earlier of the termination of these covenants by AII, with approval of EPA or its assigns. Notwithstanding the aforesaid, the covenants herein shall be deemed terminated upon termination of the RCRA Permit in accordance with the procedures of the NDEQ, or its assigns.

6. AII reserves unto itself and its successors, assigns and transferees, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions and rights set forth herein.

7. Nothing in this instrument shall limit or otherwise affect EPA's rights of entry and access provided by law or regulations.

8. Notice Requirement: AII, its successors, assigns and transferees shall include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF A DECLARATION OF THE RESTRICTIVE COVENANTS, DATED _____, 2003, RECORDED IN THE PUBLIC LAND RECORDS IN THE _____ COUNTY, NEBRASKA REGISTER OF DEED'S OFFICE ON _____, 2003, IN BOOK _____, PAGE _____, IN FAVOR OF AND ENFORCEABLE BY, THE GRANTOR, AND ALSO ENFORCEABLE BY THE THIRD PARTY BENEFICIARY, THE UNITED STATES OF AMERICA AND ITS ASSIGNS.

Within thirty (30) days of the date any such instrument of conveyance is executed, AII must provide the person receiving the conveyed interest (the Grantee) and the Third Party Beneficiary with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

9. Enforcement: AII, its successors, assigns and transferees and the Third-Party Beneficiary shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available under this instrument shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any failure, forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the AII, its successors, assigns and transferees, or the Third Party Beneficiary of such term or any subsequent breach of the same or any other term, or of any

of the rights of the AII, its successors, assigns and transferees, or the Third Party Beneficiary under this instrument.

10. Third Party Beneficiary: AII, on behalf of itself, successors, transferees, and assigns hereby agree that the EPA shall be the Third Party Beneficiary of all the benefits and rights under this instrument.

11. Waiver of Certain Defenses: AII, on behalf of itself, successors, transferees, and assigns, hereby waive any defense of laches, estoppel, or prescription.

12. Addressees: Any notice, demand, request, consent, approval, or communication that AII or the Third Party Beneficiary desire or are required to give the other under this instrument shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To: AGROMAC International, Inc.
P.O. Box 100
Scottsbluff, Nebraska 69363-0100

To: US Environmental Protection Agency
Regional Counsel
Agromac/Lockwood Superfund Site
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

13. Controlling Law: The interpretation and performance of this instrument shall be governed by the laws of the United States, or if there are no applicable federal laws, by the law of the state of Nebraska.

14. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purposes of this instrument and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

15. Severability: If any provision of this instrument, or the application of it to any person, real property or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons, real property or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

16. No Forfeiture: Nothing contained in this instrument will result in a forfeiture or reversion of AII's title to the Property in any respect.

17. Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, AII and its successors, transferees, and assigns and shall continue as a restriction that touches and concerns the Property. The rights of the Property owners under this instrument are freely assignable, subject to the notice provisions in this instrument.

18. Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, AII has caused this Environmental Protection Declaration of Restrictive Covenants to be signed in its name.

Executed this _____ day of _____, 2003.

By: _____

STATE OF NEBRASKA)
) SS
COUNTY OF SCOTTSBLUFF)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, duly commissioned and sworn, personally appeared, _____, the Grantor(s) that executed the foregoing instrument, and acknowledged the execution of this instrument to be the free and voluntary act of said Grantor(s), for the uses and purposes stated in the instrument, and on oath stated that they are authorized to execute this instrument.

WITNESS MY HAND and official seal hereto affixed the day and year written above.

Notary Public in and for the State of Iowa
My Commission Expires:

ATTACHMENTS:

Attachment A - Legal description of the Site.

Attachment B - Legal description of Site, also describing the 1.09 acre HWMU

ATTACHMENT A
Legal Description of the Site

LEGAL DESCRIPTION

A tract of land located in the Southeast Quarter (SE 1/4) of Section One (1), Township Twenty-one (21) North, Range Fifty-five (55) West of the 6th P.M., in Scotts Bluff County, Nebraska, as described in Scotts Bluff County Deed Book 128, Page 23, described as follows:

Beginning at a point 50 feet south of the Northeast corner of said SE 1/4 and on the East line of said SE 1/4; thence south on the East line of said SE 1/4 a distance of 1395.05 feet; thence west and parallel with the North line of said SE 1/4 a distance of 1253.12 feet to the East Right of Way line of the Union Pacific Railroad spur track; thence angle right $90^{\circ}-13'$ along said Right of Way line a distance of 1395.05 feet to the South Right of Way line of Nebraska State Highway No. 92; thence angle right $89^{\circ}-47'$, a distance of 1167.01 feet; thence angle right $16^{\circ}-12'$ a distance of 82.46 feet; thence angle left $106^{\circ}-16'$ a distance of 23 feet; thence angle right $90^{\circ}-04'$, a distance of 33 feet to the point of beginning,

Also, Block P, GERING INDUSTRIAL TRACTS, which is a subdivision of a part of said SE 1/4, according to the recorded plat thereof.

ATTACHMENT B
Legal Description of the Site
Including Hazardous Waste Management Unit

LEGAL DESCRIPTION

A part of the Southeast Quarter (SE1/4) of Section One (1), Township Twenty-One (21) North, Range Fifty-Five (55) West of the 6th P.M., in Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point 50 feet south of the Northeast Corner of said Southeast quarter, which point is on the East Line of said Southeast quarter, the true point of beginning; thence South on the East Line of the said Southeast quarter, a distance of 1,395.05 feet; thence west and parallel with the North Line of said Southeast quarter, a distance of 1,253.12 feet to the East Right-of-Way Line of the Union Pacific Railroad spur track; thence angle right 90°13' along said Right-of-Way line, a distance of 1,395.05 feet to the South Right-of-Way line of the Nebraska State Highway No. 92; thence angle right 89°47' a distance of 1,167.01 feet; thence angle right 16°12', a distance of 82.46 feet; thence angle left 106°16', a distance of 23 feet; thence angle right 90°04', a distance of 33 feet to the true point of beginning.

AND

Block P, GERING INDUSTRIAL TRACTS, which is a subdivision of a part of the SE $\frac{1}{4}$ of Section 1, Township 21 North, Range 55 West of the 6th P.M. in Scotts Bluff County, Nebraska; according to the recorded plat, thereof, EXCEPT, that part of Block P, which is described as follows: "Beginning at the Southeast Corner of Section 1, thence westerly on the South line of the Southeast Quarter, a distance of 1259.80 feet, thence a deflection angle right of 90°-31'-38", a distance of 129.66 feet to the TRUE POINT OF BEGINNING, thence continuing northerly on the last described course, a distance of 276.80 feet, thence a deflection angle right of 91°-36'-18", a distance of 176.76 feet, thence a deflection angle right of 89°-41'-24", a distance of 269.59 feet, thence a deflection angle right of 87°-55'-21", a distance of 170.61 feet to the true point of beginning, containing an area of 1.09 acres more or less."

AGROMAC - LOCKWOOD FACILITY
GERING, NEBRASKA
ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT 4
Legal Description of the Facility

LEGAL DESCRIPTION

A tract of land located in the Southeast Quarter (SE 1/4) of Section One (1), Township Twenty-one (21) North, Range Fifty-five (55) West of the 6th P.M., in Scotts Bluff County, Nebraska, as described in Scotts Bluff County Deed Book 128, Page 23, described as follows:

Beginning at a point 50 feet south of the Northeast corner of said SE 1/4 and on the East line of said SE 1/4; thence south on the East line of said SE 1/4 a distance of 1395.05 feet; thence west and parallel with the North line of said SE 1/4 a distance of 1253.12 feet to the East Right of Way line of the Union Pacific Railroad spur track; thence angle right 90°-13' along said Right of Way line a distance of 1395.05 feet to the South Right of Way line of Nebraska State Highway No. 92; thence angle right 89°-47', a distance of 1167.01 feet; thence angle right 16°-12' a distance of 82.46 feet; thence angle left 106°-16' a distance of 23 feet; thence angle right 90°-04', a distance of 33 feet to the point of beginning,

Also, Block P, GERING INDUSTRIAL TRACTS, which is a subdivision of a part of said SE 1/4, according to the recorded plat thereof.